

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-2205

JOHN ANDREW MYRICK,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF
DEFENSE; UNITED STATES DEPARTMENT OF THE ARMY; JOINT
IMPROVISED EXPLOSIVE DEVICE DEFEAT ORGANIZATION, (JIEDDO);
COUNTER-IMPROVISED EXPLOSIVE DEVICE OPERATIONS &
INTELLIGENCE INTEGRATION CENTER, (COIC),

Defendants - Appellees,

and

PAUL J. STURM; ROBERT KELLY GRAY,

Defendants.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Leonie M. Brinkema,
District Judge. (1:13-cv-00281-LMB-JFA)

Submitted: February 26, 2014

Decided: March 7, 2014

Before FLOYD and THACKER, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed by unpublished per curiam opinion.

John Andrew Myrick, Appellant Pro Se. Anil Suresh Murjani,
Special Assistant United States Attorney, Sosun Bae, Edward
Reynolds Wilson, OFFICE OF THE UNITED STATES ATTORNEY,
Alexandria, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Andrew Myrick appeals the district court's orders denying his motions for default judgment, denying his objection to the substitution of the United States for the individual defendants, and granting the United States' motion to dismiss. Myrick also seeks to amend his complaint to include additional defamation claims. We have reviewed the record, including the transcript of the motion hearing, and find no reversible error.

The district court did not err in denying Myrick's motions for default judgment because the United States' timely filing of a motion to dismiss suspended its obligation to file an answer. See Fed. R. Civ. P. 12(a)(3), 12(a)(4), 55(a). Myrick failed to show by a preponderance of the evidence that the individual defendants acted outside the scope of their employment. See Borneman v. United States, 213 F.3d 819, 827 (4th Cir. 2000). Finally, the district court properly found that the United States has not waived its sovereign immunity for claims of defamation. See 28 U.S.C. § 2680(h) (2012); Talbert v. United States, 932 F.2d 1063, 1066-67 (4th Cir. 1991). Accordingly, we affirm the district court's judgment and deny Myrick's motion to amend his complaint.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials

before this court and argument would not aid the decisional process.

AFFIRMED